

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte CHARLES D. THRIFT

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Appeal No. 2003-1727  
Application No. 09/589,015

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ON BRIEF

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Before GARRIS, PAK, and POTEATE, Administrative Patent Judges.  
PAK, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 the examiner's final rejection of claims 17 through 29. Claims 1 through 11 and 14 through 16, the remaining claims in the present application, have been indicated to be allowable by the examiner.

APPEALED SUBJECT MATTER

Claims 17 and 26 are representative of the subject matter on appeal and read as follows:

17. A fitting assembly for fluid and vapor connection comprising:  
a first tube having a male member formed at end of said first tube;  
a second tube having a hollow female body formed at end of said second tube,  
said male member received in said female body; and  
a thin strip of polymeric material having a layer of adhesive applied to one surface of said  
strip, said strip bonded to said male member and unbonded to said female body, said strip  
compressed between said male member and said female body to create a seal.
26. A method for forming a fluid or vapor connection, said method comprising the steps  
of:  
providing a first tube having a male member formed at end of said first tube;  
providing a second tube having a hollow female body formed at end of said second tube;  
providing a thin strip of polymeric material having a layer of adhesive applied to one surface  
of said strip;  
wrapping said strip of polymeric material around said male member;  
inserting said male member into said female body; and  
compressing said strip of polymeric material between said male member and said female  
body to create a seal.

PRIOR ART

As evidence of obviousness, the examiner relies on the following prior art references:

Chisnell et al (Chisnell)	5,044,671	Sep. 3, 1991
Sylvester	6,190,751 B1	Feb. 20, 2001
		(Filed Nov. 24, 1998)

REJECTION

Claims 17 through 29 stand rejected under 35 U.S.C. § 103 as unpatentable over the  
combined disclosures of Chisnell and Sylvester.

OPINION

We have carefully reviewed the claims, specification and applied prior art, including all of the arguments and evidence advanced by both the examiner and the appellants in support of their respective positions. This review leads us to conclude that the examiner's Section 103 rejection is not well founded. Accordingly, we reverse the Section 103 rejection for essentially those reasons set forth in the Brief. We add the following primarily for emphasis and completeness.

The examiner's Section 103 rejection is premised upon obviousness of replacing O-ring 28 in the hose coupling assembly disclosed in Chisnell with the gasket disclosed in Sylvester. See the Answer, pages 4-7, together with the final Office action dated March 13, 2002, pages 2-4. However, the examiner's Section 103 rejection is flawed because of the examiner's failure to consider the different utilities of the gasket and the sealing means disclosed in Sylvester and Chisnell, respectively, as urged by the appellants at page 7 of the Brief.

Specifically, we observe that Chisnell is directed to using a combination of an O-ring and a mechanical locking system as a sealing means in hose-fitting assemblies "designed for use in high pressure fluid conducting system such as automotive air conditioning systems." See column 1, lines 5-10, together with column 2, lines 11-21. We observe that Chisnell teaches that this particular combination "address[es] completely and meet[s] effectively and economically the stringent current requirements for automotive air condition hose assemblies which require in effect, that there be no leakage of refrigerant gas from the system for up to 12 years." See column 2, lines 4-9.

Recognizing that Chisnell does not disclose the claimed sealing means, the examiner relies on the disclosure of Sylvester. See, e.g., the Answer, page 5. However, we observe that Sylvester is directed to a self-adhesive reinforced foam gasket for use in

automotive industry such as a gasket for inside the glove box, for the outside mirror, around where the seat belt attaches to the floor, as a seal around the top of the fuel tank filling tube, around audio speakers in the front and back of the car, around cut-outs in the dash for air conditioning ducting, around the inside of the door, to act as a secondary seal around the opera window, and to act as a secondary seals around the trunk lid... As is apparent, the invented gasket material can be used in similar gasket application outside the automotive industry. These gaskets principally cushion and seal against wind, noise and moisture. See column 4, lines 50-65, column 2, lines 43-59 and column 1, lines 23-26.

As correctly stated by the appellants (Brief, page 7), “[t]he gasket disclosed in Sylvester and the O-ring 28 disclosed in Chisnell perform different functions which would lead one of ordinary skill in the art to the conclusion that the gasket and the O-ring 28 are not interchangeable.” In other words, the applied prior art references do not reveal that in so employing the gasket described in Sylvester in the high pressure fluid conducting systems described in Chisnell, one of ordinary skill in the art would have a reasonable expectation of success in preventing leakage of fluid, such as refrigerant gas. *In re Vaeck*, 947 F.2d 488, 493, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991). Nor do they provide any motivation or suggestion to replace the effective sealing means described in Chisnell with a gasket untested in a harsh condition, such as the one described in Sylvester. *Vaeck*, 947 F.2d at 493, 20 USPQ2d at 1442. To do so would destroy the invention on which Chisnell is based. *Ex parte Hartmann*, 186 USPQ 366, 367 (Bd. App. 1974).

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In view of the foregoing, we are constrained to reverse the examiner's decision rejecting the claims on appeal under 35 U.S.C. § 103.

REVERSED

BRADLEY R. GARRIS	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
CHUNG K. PAK	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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	)	
LINDA R. POTEATE	)	
Administrative Patent Judge	)	

CKP/lp

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